



April 10, 2009

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## ENGROSSED HOUSE BILL No. 1360

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DIGEST OF HB 1360 (Updated April 7, 2009 2:09 pm - DI 58)

**Citations Affected:** IC 8-1; IC 32-24.

**Synopsis:** State energy policy. Requires the utility regulatory commission (IURC) to consider in the rate base of a public utility that complies with certain renewable energy standards (RES) any capital expenditures made by the public utility to extend gas or electric service to a customer that produces biofuels or is a renewable energy manufacturing facility. Requires the IURC to provide certain financial incentives for implementing electric line facilities projects to electricity suppliers that comply with a certain RES. Allows a public utility that proposes to take, acquire, condemn, or appropriate land, real estate, or any interest in land or real estate for certain projects related to electric line facilities to obtain from the IURC a certificate of authority. Requires the IURC to hold a public hearing and to find that the public utility has demonstrated certain elements, and to encourage investment in electric line facilities by creating financial incentives that the IURC  
(Continued next page)

**Effective:** Upon passage; July 1, 2009.

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**Battles, Wolkins, Pelath, Behning**  
(SENATE SPONSORS — GARD, DEIG, BREAUX)

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January 13, 2009, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.

February 9, 2009, reassigned to Committee on Ways and Means.

February 17, 2009, reported — Do Pass.

February 20, 2009, read second time, amended, ordered engrossed, engrossed.

February 25, 2009, read third time, passed. Yeas 91, nays 3.

SENATE ACTION

March 2, 2009, read first time and referred to Committee on Energy and Environmental Affairs.

March 5, 2009, reassigned to Committee on Tax and Fiscal Policy pursuant to Senate Rule 65(b).

April 9, 2009, amended, reported favorably — Do Pass.

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EH 1360—LS 7160/DI 101+



finds to be reasonable and necessary. Modifies common law to provide that the owner of land against which eminent domain is initiated may object to the public purpose and necessity of the project only if the condemnor has not been issued a certificate of authority. Provides that: (1) low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facilities; and (2) purchases of energy produced by such facilities; qualify for the financial incentives available for clean coal and energy projects. Provides that an eligible business may recover qualified utility system expenses, which include specified preconstruction costs, associated with a: (1) new energy production or generating facility; or (2) low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility. Amends definition of alternative energy projects to conform with definition of renewable energy resources. Requires electricity suppliers to comply with an RES by specified dates. Provides that an electricity supplier that does not comply with a higher RES is not eligible for certain financial incentives related to renewable energy development. Requires the IURC to allow the recovery of reasonable and necessary costs incurred by an energy utility in connection with a green infrastructure project that provides electric, steam, or gas service to or receives electric, steam, or gas service from an alternate energy production facility, a renewable energy manufacturing facility, or renewable resources. Provides that an energy utility may implement a rate adjustment if the IURC fails to act on an application. Requires an investor owned electric utility to offer net metering to certain customers that generate electricity from renewable energy resources. Establishes a billing method for net metering customers. Voids conflicting administrative rules. Establishes the office of alternative energy incentives (office) within the office of energy development to administer a program to provide incentives for rural electric membership corporations (corporations) and their cooperatively owned power suppliers to develop alternative energy projects. Provides that: (1) the director of the office of energy development; or (2) the designee of the director of the office of energy development; shall serve as the office's director. Allows two or more corporations that are members of the same cooperatively owned power supplier to develop alternative energy projects jointly. Gives the office authority to adopt rules to implement the program. Provides that a corporation shall have access to federal economic stimulus funds: (1) for the same uses; and (2) in accordance with the same processes; as any other energy utility may have access to or use federal economic stimulus money.

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April 10, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1360

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-1-2-23.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]: **Sec. 23.1. (a) This section applies to a public utility that**  
4 **complies with the schedule set forth in IC 8-1-37-5(b).**

5 **(b) For purposes of section 23 of this chapter, the construction,**  
6 **addition, extension, or improvement of a public utility's plant or**  
7 **equipment to provide electric or gas service to a customer that:**

8 **(1) produces biodiesel, ethanol, or any other biofuel; or**

9 **(2) is a renewable energy manufacturing facility (as defined**  
10 **in IC 8-1-38-4);**

11 **is in fact used and useful in the public service.**

12 **(c) This subsection applies to a public utility's general rate**  
13 **proceeding that immediately follows the public utility's investment**  
14 **in a construction, an addition, an extension, or an improvement**

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described in subsection (b). A public utility may accrue for recovery in the rate proceeding depreciation and a return, not to exceed a total of fifty million dollars (\$50,000,000), on the public utility's investment at the rate of return authorized by the commission in the public utility's general rate proceeding immediately preceding the investment. The accrual of a return by a public utility under this subsection:

(1) begins on the date the public utility initially records the investment in the public utility's books or records, as determined by the commission; and

(2) ends on the earlier of the following dates:

(A) The date on which the public utility accrues the full return determined under this subsection.

(B) The date rates are placed in effect after a general rate proceeding that recognizes an investment by a public utility in the public utility's rate base.

(d) Notwithstanding subsection (c), the commission shall revoke a cost recovery approved under this chapter for an electricity supplier that the commission determines has:

(1) elected to; and

(2) failed to;

comply with the schedule set forth in IC 8-1-37-5(b).

(e) This section expires December 31, 2020, unless reauthorized by the general assembly before December 31, 2020. However, a return accrued under this section before January 1, 2021, expires on the appropriate date determined under subsection (c)(2) even if the expiration date occurs after December 31, 2020.

SECTION 2. IC 8-1-8.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

#### **Chapter 8.2. Electric Line Facilities Projects**

**Sec. 1.** As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

**Sec. 2.** As used in this chapter, "electric line facilities" means the following:

(1) Overhead or underground electric transmission lines.

(2) Overhead or underground electric distribution lines.

(3) Electric substations.

**Sec. 3.** As used in this chapter, "electric line facilities project" means an addition to or the construction, operation, maintenance, reconstruction, relocation, upgrading, or removal of electric line facilities.

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1       Sec. 4. As used in this chapter, "electricity supplier" means a  
2 public utility that furnishes retail electric service to the public.

3       Sec. 5. As used in this chapter, "public utility" has the meaning  
4 set forth in IC 8-1-2-1.

5       Sec. 6. As used in this chapter, "regional transmission  
6 organization" refers to the regional transmission organization  
7 approved by the Federal Energy Regulatory Commission for the  
8 control area in which an electricity supplier operates electric line  
9 facilities.

10       Sec. 7. As used in this chapter, "renewable energy resources"  
11 has the meaning set forth in IC 8-1-37-4.

12       Sec. 8. This chapter applies to an electricity supplier that  
13 complies with the schedule set forth in IC 8-1-37-5(b).

14       Sec. 9. (a) The commission shall encourage electric line facilities  
15 projects by creating the following financial incentives for electric  
16 line facilities that are reasonable and necessary:

17           (1) The timely recovery of costs, by means of a periodic rate  
18 adjustment mechanism, incurred by an electricity supplier in  
19 connection with an electric line facilities project that  
20 transmits or distributes electricity generated from renewable  
21 energy resources.

22           (2) The timely recovery of costs, by means of a periodic rate  
23 adjustment mechanism, incurred by an electricity supplier  
24 taking service under a tariff of, or being assessed costs by the:

25                   (A) regional transmission organization; or

26                   (B) Federal Energy Regulatory Commission.

27       (b) The commission shall determine a reasonable schedule  
28 under which an electricity supplier may recover costs under this  
29 section. In making a determination under this subsection, the  
30 commission shall consider the impact of the cost recovery on  
31 ratepayers of the electricity supplier.

32       Sec. 10. (a) Subject to subsection (h), an electricity supplier must  
33 submit an application to the commission for approval of an electric  
34 line facilities project for which the electricity supplier seeks to  
35 receive a financial incentive created under section 9 of this chapter.

36       (b) The commission shall prescribe the form for an application  
37 submitted under this section.

38       (c) Upon receipt of an application under subsection (a), the  
39 commission shall review the application for completeness. The  
40 commission may request additional information from an applicant  
41 as needed. The commission may not review an application  
42 submitted after December 31, 2020, unless authorized to do so by

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the general assembly before January 1, 2021.

(d) The commission, after notice and hearing, shall issue a determination of an electric line facilities project's eligibility for the financial incentives described in section 9 of this chapter not later than one hundred eighty (180) days after the date of the application. A determination under this subsection must include a finding that the applicant electricity supplier is in compliance with the schedule set forth in IC 8-1-37-5(b).

(e) Subject to subsections (g) and (h), the commission shall approve an application by an electricity supplier for an electric line facilities project that is reasonable and necessary. An electric line facilities project is presumed to be reasonable and necessary if the electric line facilities project:

(1) is consistent with, or part of, a plan developed by the:

(A) regional transmission organization; or

(B) Federal Energy Regulatory Commission; or

(2) transmits or distributes electricity generated from renewable energy resources.

However, an electricity supplier may seek approval from the commission at the electricity supplier's next general rate proceeding to include in the electricity supplier's basic rates the recoverable costs sought in an application approved under this subsection.

(f) This section does not relieve an electricity supplier of the duty to obtain any certificate required under IC 8-1-8.5 or IC 8-1-8.7.

(g) The commission shall not approve a financial incentive for that part of an electric line facilities project that exceeds the lesser of:

(1) seven percent (7%) of the electricity supplier's rate base approved by the commission in the electricity supplier's most recent general rate proceeding; or

(2) one hundred fifty million dollars (\$150,000,000).

(h) The commission may not approve a financial incentive under section 9 of this chapter for a particular electricity supplier if the commission has approved a financial incentive under section 9 of this chapter in the preceding twelve (12) months for that electricity supplier, unless the commission determines that approving a particular financial incentive for an electricity supplier on a more timely basis will benefit the electricity supplier's ratepayers.

(i) A financial incentive that the commission approves before January 1, 2021, or that an electricity supplier applies for before

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January 1, 2021, and that is subsequently approved, expires on the earlier of the following dates:

(1) The date on which the electricity supplier accrues the full recovery amount authorized by the commission.

(2) The date specified by the commission in its approval of the financial incentive.

Sec. 11. The commission shall revoke all financial incentives approved under this chapter for an electricity supplier that the commission determines has:

(1) elected to; and

(2) failed to;

comply with the schedule set forth in IC 8-1-37-5(b).

SECTION 3. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 8.4. Certificate of Authority for Certain Projects**

Sec. 1. As used in this chapter, "electric line facilities" means overhead and underground electric transmission and distribution lines, electric substations, and overhead and underground telecommunication lines associated with electric transmission and distribution.

Sec. 2. As used in this chapter, "project" means the proposed activity of a public utility described in section 6 of this chapter.

Sec. 3. As used in this chapter, "public utility" has the meaning set forth in IC 8-1-2-1, except as provided in IC 8-1-2-1.1.

Sec. 4. A public utility that proposes to take, acquire, condemn, or appropriate land, real estate, or any interest in land or real estate for one (1) or more of the following purposes with respect to electric line facilities may elect to follow the procedure in this chapter instead of the procedures in IC 32-24-1:

(1) Construction.

(2) Reconstruction.

(3) Operation.

(4) Maintenance.

(5) Relocation.

(6) Upgrade.

(7) Removal.

(8) Additions.

Sec. 5. If a public utility makes an election under section 4 of this chapter, the public utility shall:

(1) file a petition with the commission for a certificate of authority for the project; and

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(2) publish notice under IC 5-3-1 in each county in Indiana in which the project is to occur of:

(A) the project; and

(B) a public hearing to be held by the commission on the project in one (1) or more of those counties.

Sec. 6. The commission shall grant intervenor status in the certificate of authority proceeding to any person that petitions the commission for intervenor status.

Sec. 7. (a) After the public hearing required by section 5 of this chapter, the commission shall issue a certificate of authority under this chapter authorizing the project if in the commission proceeding the public utility demonstrates the following to the satisfaction of the commission:

(1) At least one (1) of the following applies:

(A) The project is expected to result in intrastate benefits or interstate benefits, or both.

(B) Except with respect to the removal of electric line facilities, the electric line facilities that are the subject of the project are needed or will be needed to furnish retail electric service or wholesale electric service, or both, in Indiana or outside Indiana, or both.

(C) The project is consistent with or part of a plan developed by a regional transmission organization approved by the Federal Energy Regulatory Commission, or a successor or similar organization, for the control area applicable to the electric line facilities.

(2) Except with respect to the removal of electric line facilities, the following for the project are reasonable:

(A) The site.

(B) The location.

(C) The general route, width, and beginning and end points of the right-of-way.

(b) After the public hearing required by section 5 of this chapter, the commission may deny the petition if the public utility fails to demonstrate the factors listed in subsection (a) to the satisfaction of the commission.

Sec. 8. (a) The commission:

(1) shall promptly review a petition filed under section 5 of this chapter for completeness;

(2) may request additional information it considers necessary to aid in its review; and

(3) subject to subsection (b), shall act under section 7 of this

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chapter on a petition not later than one hundred twenty (120) days after the date of the petition.

(b) The period under subsection (a)(3) does not include the days beginning on the date of a request for additional information under subsection (a)(2) and ending on the date the requested information is provided.

(c) If the commission fails to act in a timely manner under subsection (a)(3):

(1) the factors listed in section 7(a) of this chapter are considered to have been demonstrated to the satisfaction of the commission; and

(2) the certificate of authority for which the petition was filed under section 5 of this chapter is considered to have been issued by the commission under section 7 of this chapter.

Sec. 9. Upon the request of the public utility, the commission shall certify the issuance of a certificate of authority under section 7 of this chapter.

Sec. 10. If:

(1) an action in eminent domain is commenced by a public utility against an owner of land, real estate, or an interest in land or real estate to which a certificate of authority issued under section 7 of this chapter applies;

(2) the public utility files in that action the certificate of authority as certified under section 9 of this chapter; and

(3) the court in that action finds that the public utility has made an offer to purchase the land, real estate, or interest in land or real estate under IC 32-24-1-3(b)(2) and IC 32-24-1-5; the court shall issue to the public utility an order of appropriation and appointment of appraisers under IC 32-24-1-7 for the land, real estate, or interest in land or real estate and assess compensation and damages for the appropriation under IC 32-24-1.

Sec. 11. Upon review of an appropriate petition filed by a public utility, the commission shall encourage investment in electric line facilities by creating financial incentives that the commission finds to be reasonable and necessary.

Sec. 12. If a public utility does not petition under this chapter for a certificate of authority for specific electric line facilities:

(1) nothing in this chapter diminishes:

(A) the public utility's right of eminent domain for those electric line facilities; or

(B) the rights of any person in any eminent domain

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proceeding; and  
 (2) the election by a public utility to not petition under this chapter for a certificate of authority may not be raised as an objection in any eminent domain proceeding by the owner under IC 32-24-1-8.

SECTION 4. IC 8-1-8.8-2, AS AMENDED BY P.L.175-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. As used in this chapter, "clean coal and energy projects" means any of the following:

(1) Any of the following projects:

(A) Projects at new energy production or generating facilities that employ the use of clean coal technology and that produce energy, including substitute natural gas, primarily from coal, or gases derived from coal, from the geological formation known as the Illinois Basin.

(B) Projects to provide advanced technologies that reduce regulated air emissions from existing energy production or generating plants that are fueled primarily by coal or gases from coal from the geological formation known as the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment.

(C) Projects to provide electric transmission facilities to serve a new energy production or generating facility **or a low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility.**

(D) Projects that produce substitute natural gas from Indiana coal by construction and operation of a coal gasification facility.

**(E) Projects or potential projects that employ the use of low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating technologies to produce electricity.**

(2) Projects to develop alternative energy sources, including renewable energy projects ~~and~~ **or** coal gasification facilities.

(3) The purchase of fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility.**

(4) Projects described in subdivisions (1) through ~~(3)~~ **(2)** that use coal bed methane.

SECTION 5. IC 8-1-8.8-6, AS AMENDED BY P.L.175-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2009]: Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) or owner of a coal gasification facility that:

- (1) proposes to construct or repower a new energy production or generating facility;
- (2) proposes to construct or repower a project described in section 2(1) or 2(2) of this chapter;
- (3) undertakes a project to develop alternative energy sources, including renewable energy projects or **coal gasification facilities; or**
- (4) purchases fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility.**

SECTION 6. IC 8-1-8.8-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.5. (a) As used in this chapter, "low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility" means an energy production or generation facility, including transmission lines and equipment described in subsection (b), that is:

- (1) installed or constructed at the site of a facility that supplies electricity to Indiana retail customers as of July 1, 2009; and
- (2) intended to produce:
  - (A) no carbon dioxide as a byproduct of the production or generation of energy; or
  - (B) less carbon dioxide per megawatt hour of electricity generated than is produced per megawatt hour of electricity generated by a coal fired or other fossil fuel based energy production or generating facility.

(b) The term includes the transmission lines and other associated equipment employed specifically to serve a low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility.

SECTION 7. IC 8-1-8.8-8, AS AMENDED BY P.L.175-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) As used in this chapter, "new energy **production or** generating facility" refers to a generation or coal gasification facility that satisfies all of the following:

- (1) The facility produces energy primarily from coal or gases from coal from the geological formation known as the Illinois Basin.
- (2) The facility is a:
  - (A) newly constructed or newly repowered energy ~~generation~~

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1 plant; or

2 (B) newly constructed ~~generation~~ capacity expansion at an  
3 existing ~~facility~~; **plant**;

4 dedicated primarily to serving Indiana retail customers.

5 (3) The repowering, construction, or expansion of the facility was  
6 begun by an Indiana utility after July 1, 2002.

7 (4) Except for a facility that is a clean coal and energy project  
8 under section 2(2) of this chapter, the facility has an aggregate  
9 rated electric generating capacity of at least one hundred (100)  
10 megawatts for all units at one (1) site or a generating capacity of  
11 at least four hundred thousand (400,000) pounds per hour of  
12 steam.

13 (b) The term includes the transmission lines, gas transportation  
14 facilities, and associated equipment employed specifically to serve a  
15 new energy generating or coal gasification facility.

16 SECTION 8. IC 8-1-8.8-8.5 IS ADDED TO THE INDIANA CODE  
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
18 1, 2009]: **Sec. 8.5. As used in this chapter, "qualified utility system  
19 expenses" means any preconstruction costs associated with the  
20 study, analysis, or development of a:**

21 **(1) new energy production or generating facility; or**

22 **(2) new low carbon dioxide emitting or non-carbon dioxide  
23 emitting energy production or generating facility;**

24 **including siting, design, licensing, and permitting costs.**

25 SECTION 9. IC 8-1-8.8-9, AS AMENDED BY P.L.175-2007,  
26 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2009]: **Sec. 9. As used in this chapter, "qualified utility system  
28 property" means any:**

29 **(1) new energy ~~production or~~ generating or coal ~~gasification~~  
30 facility; or**

31 **(2) new low carbon dioxide emitting or non-carbon dioxide  
32 emitting energy production or generating facility;**

33 used, or to be used, in whole or in part, by an energy utility to provide  
34 retail energy service (as defined in IC 8-1-2.5-3) regardless of whether  
35 that service is provided under IC 8-1-2.5 or another provision of this  
36 article.

37 SECTION 10. IC 8-1-8.8-11 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11. (a) The commission  
39 shall encourage clean coal and energy projects by creating the  
40 following financial incentives for clean coal and energy projects, if the  
41 projects are found to be reasonable and necessary:**

42 **(1) The timely recovery of costs incurred during construction and**

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operation of projects described in section 2(1) or 2(2) of this chapter.

(2) The authorization of up to three (3) percentage points on the return on shareholder equity that would otherwise be allowed to be earned on projects described in subdivision (1).

(3) Financial incentives for the purchase of fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility**, including cost recovery and the incentive available under subdivision (2).

(4) Financial incentives for projects to develop alternative energy sources, including renewable energy projects **or coal gasification facilities**.

(5) Other financial incentives the commission considers appropriate.

(b) An eligible business must file an application to the commission for approval of a clean coal and energy project under this section. This chapter does not relieve an eligible business of the duty to obtain any certificate required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter for one (1) project may file a single application for all necessary certificates. If a single application is filed, the commission shall consider all necessary certificates at the same time.

(c) The commission shall promptly review an application filed under this section for completeness. The commission may request additional information the commission considers necessary to aid in its review.

(d) The commission shall, after notice and hearing, issue a determination of a project's eligibility for the financial incentives described in subsection (a) not later than one hundred twenty (120) days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding.

SECTION 11. IC 8-1-8.8-12, AS AMENDED BY P.L.175-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) The commission shall provide financial incentives to eligible businesses for:

(1) new energy ~~producing and~~ **production or** generating facilities; **and**

(2) **new low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facilities;**

in the form of timely recovery of the costs incurred in connection with the **study, analysis, development, siting, design, licensing,**

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1 **permitting**, construction, repowering, expansion, operation, or  
2 maintenance of the facilities.

3 (b) An eligible business seeking authority to timely recover the costs  
4 described in subsection (a) must apply to the commission for approval  
5 of a rate adjustment mechanism in the manner determined by the  
6 commission.

7 (c) An application must include the following:

8 (1) A schedule for the completion of construction, repowering, or  
9 expansion of the ~~new energy generating or coal gasification~~  
10 facility for which rate relief is sought.

11 (2) Copies of the most recent integrated resource plan filed with  
12 the commission, if applicable.

13 (3) The amount of capital investment by the eligible business in  
14 the ~~new energy generating or coal gasification~~ facility.

15 (4) Other information the commission considers necessary.

16 (d) The commission shall allow an eligible business to recover:

17 (1) the costs associated with qualified utility system property; **and**

18 (2) **qualified utility system expenses;**

19 if the eligible business provides substantial documentation that the  
20 expected costs ~~associated with qualified utility system property~~ and  
21 **expenses and** the schedule for incurring those costs **and expenses** are  
22 reasonable and necessary.

23 (e) The commission shall allow an eligible business to recover the  
24 costs associated with the purchase of fuels **or energy** produced by a  
25 coal gasification facility **or by a low carbon dioxide emitting or**  
26 **non-carbon dioxide emitting energy production or generating**  
27 **facility** if the eligible business provides substantial documentation that  
28 the costs associated with the purchase are reasonable and necessary.

29 (f) A retail rate adjustment mechanism proposed by an eligible  
30 business under this section may be based on actual or forecasted data.  
31 If forecast data is used, the retail rate adjustment mechanism must  
32 contain a reconciliation mechanism to correct for any variance between  
33 the forecasted costs and the actual costs.

34 SECTION 12. IC 8-1-13.1 IS ADDED TO THE INDIANA CODE  
35 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
36 UPON PASSAGE]:

37 **Chapter 13.1. Alternative Energy Projects by Rural Electric**  
38 **Membership Corporations**

39 **Sec. 1. The general assembly makes the following findings:**

40 (1) **Alternative energy projects result in quantifiable**  
41 **reductions in, or the avoidance of, regulated air pollutants**  
42 **and carbon emissions produced by traditional electric**

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generating facilities that use fossil fuels as their fuel source.

(2) Corporations and cooperatively owned power suppliers should plan and implement alternative energy projects on behalf of and at the request of their members.

(3) Incentives that encourage corporations and their cooperatively owned power suppliers to:

(A) develop alternative energy projects; and

(B) apply for, and contribute matching funds to, state or federal grants and programs for alternative energy projects;

are in the public interest of the state and its citizens and are crucial to the state's economic development efforts.

Sec. 2. As used in this chapter, "alternative energy project" means a project that:

(1) develops or makes use of renewable energy resources (as defined in IC 8-1-37-4) for the production of electricity; and

(2) is implemented under a plan approved by:

(A) the office; and

(B) a corporation's or a cooperatively owned power supplier's board of directors.

Sec. 3. As used in this chapter, "cooperatively owned power supplier" means an energy utility (as defined in IC 8-1-2.5-2) that is organized under IC 23-17 and whose membership includes one (1) or more corporations organized under IC 8-1-13.

Sec. 4. As used in this chapter, "corporation" means a corporation organized under IC 8-1-13 as a local district corporation (as defined in IC 8-1-13-23(b)).

Sec. 5. As used in this chapter, "director" refers to the director of the office of alternative energy incentives serving under section 8(b) of this chapter.

Sec. 6. As used in this chapter, "office" refers to the office of alternative energy incentives established by section 8 of this chapter.

Sec. 7. As used in this chapter, "retail energy service" has the meaning set forth in IC 8-1-2.5-3.

Sec. 8. (a) The office of alternative energy incentives is established within the office of energy development to provide assistance to corporations in the development of alternative energy projects.

(b) The:

(1) director of the office of energy development; or

(2) designee of the office of energy development, who must be

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1 qualified by knowledge of or experience in the electric utility  
 2 industry;  
 3 shall serve as the director of the office.

4 (c) The director:

5 (1) serves at the pleasure of and is responsible to the director  
 6 of the office of energy development, if the director is a  
 7 designee of the director of the office of energy development;

8 (2) may receive compensation in an amount determined by the  
 9 director of the office of energy development, subject to the  
 10 approval of the budget agency, if the director is a designee of  
 11 the director of the office of energy development;

12 (3) serves as the chief executive and administrative officer of  
 13 the office; and

14 (4) may, to the extent appropriate, delegate the director's  
 15 authority under this chapter, subject to the approval of:

16 (A) the director of the office of energy development, if the  
 17 director is a designee of the director of the office of energy  
 18 development; and

19 (B) the budget agency.

20 (d) The director of the office of energy development may:

21 (1) establish; and

22 (2) appoint members to;

23 an advisory board to advise the office in the administration of this  
 24 chapter.

25 Sec. 9. The office may adopt rules under IC 4-22-2 to implement  
 26 this chapter.

27 Sec. 10. This chapter shall not be construed to constrain a  
 28 corporation's access to and immediate use of federal economic  
 29 stimulus funds for alternative energy projects.

30 SECTION 13. IC 8-1-37 IS ADDED TO THE INDIANA CODE AS  
 31 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 32 1, 2009]:

33 Chapter 37. Renewable Energy Development

34 Sec. 1. (a) As used in this chapter, "electricity supplier" means  
 35 a public utility (as defined in IC 8-1-2-1) that furnishes retail  
 36 electric service to the public.

37 (b) The term does not include a utility that is a:

38 (1) municipally owned utility (as defined in IC 8-1-2-1(h));

39 (2) corporation organized under IC 8-1-13; or

40 (3) corporation organized under IC 23-17 that is an electric  
 41 cooperative and that has at least one (1) member that is a  
 42 corporation organized under IC 8-1-13.

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1       Sec. 2. As used in this chapter, "regional transmission  
2 organization" has the meaning set forth in IC 8-1-8.2-6.

3       Sec. 3. As used in this chapter, "renewable energy credit", or  
4 "REC", means one (1) megawatt hour of electricity that is:

5           (1) generated from a renewable energy resource described in  
6 section 4(a) of this chapter;

7           (2) quantifiable; and

8           (3) possessed by not more than one (1) entity at a time.

9       Sec. 4. (a) As used in this chapter, "renewable energy resources"  
10 includes the following sources, technologies, and programs for the  
11 production or conservation of electricity:

12           (1) Methane systems that convert waste products, including  
13 animal, food, and plant waste, into electricity or fuel for the  
14 production of electricity.

15           (2) Methane recovered from landfills or coal mines.

16           (3) Wind.

17           (4) Solar photovoltaic cells and panels.

18           (5) Clean coal and energy projects (as defined in IC 8-1-8.8-2),  
19 including plant efficiency measures.

20           (6) Dedicated crops grown for energy production.

21           (7) Energy from waste to energy facilities.

22           (8) Non-carbon dioxide emitting or low carbon dioxide  
23 emitting electricity generating technologies placed in service  
24 after June 30, 2009.

25           (9) Hydropower.

26           (10) Demand side management, conservation, or energy  
27 efficiency programs that:

28               (A) reduce electricity consumption; or

29               (B) implement load management or demand response  
30 technologies that shift a customer's electric load from  
31 periods of higher demand to periods of lower demand.

32           (11) Combined heat and power systems that:

33               (A) use natural gas or renewable energy resources as  
34 feedstock; and

35               (B) achieve at least seventy percent (70%) overall  
36 efficiency.

37           (12) Geothermal hot water district heating systems.

38           (13) Electricity generated through net metering that is  
39 regulated under rules adopted by the commission or other  
40 Indiana law.

41           (14) Energy storage facilities.

42           (15) Integrated gasification combined cycle (IGCC)

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technology to produce synthetic gas that is used:

(A) to generate electricity; or

(B) as a substitute for natural gas;

regardless of the fuel source used to produce the synthetic gas.

(16) A renewable energy resource listed in IC 8-1-8.8-10 to the extent the renewable energy resource is not already described in this subsection.

(b) Except as provided in subsection (a)(7), the term does not include energy from the incineration, burning, or heating of the following:

(1) Garbage.

(2) General household, institutional, or commercial waste.

(3) Industrial lunchroom or office waste.

(4) Landscape waste.

(5) Construction or demolition debris.

(6) Feedstock that is municipal, food, plant, industrial, or animal waste from outside Indiana.

Sec. 5. (a) Each electricity supplier shall supply electricity under a schedule set forth in either subsection (b) or (c).

(b) In order to qualify for a financial incentive under IC 8-1-2-23.1 or IC 8-1-8.4-9, an electricity supplier shall supply electricity that is generated from renewable energy resources described in section 4(a) of this chapter to Indiana customers as a percentage of the total electricity supplied by the electricity supplier to Indiana customers during a calendar year as follows:

(1) Not later than the calendar year ending December 31, 2010, at least three percent (3%).

(2) Not later than the calendar year ending December 31, 2015, at least six percent (6%).

(3) Not later than the calendar year ending December 31, 2020, at least ten percent (10%).

(4) Not later than the calendar year ending December 31, 2025, at least fifteen percent (15%).

For purposes of this subsection, electricity is measured in megawatt hours.

(c) An electricity supplier that elects not to comply with subsection (b) shall supply electricity that is generated from renewable energy resources described in section 4(a) of this chapter to Indiana customers as a percentage of the total electricity supplied by the electricity supplier to Indiana customers during a calendar year as follows:

(1) Not later than the calendar year ending December 31,

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2010, at least one and five-tenths percent (1.5%).

(2) Not later than the calendar year ending December 31, 2015, at least four percent (4%).

(3) Not later than the calendar year ending December 31, 2020, at least seven percent (7%).

(4) Not later than the calendar year ending December 31, 2025, at least ten percent (10%).

For purposes of this subsection, electricity is measured in megawatt hours.

(d) An electricity supplier may own or purchase RECs or carbon offset equivalents to comply with subsection (b) or (c), as applicable.

(e) An electricity supplier may not use a renewable energy resource described in section 4(a)(5), 4(a)(8), 4(a)(10), or 4(a)(11) of this chapter to generate more than twenty-five percent (25%) of the electricity that the electricity supplier is required to supply under subsection (b) or (c), as applicable.

(f) If an electricity supplier exceeds the applicable percentage under subsection (b) or (c) in a compliance year, the electricity supplier may carry forward the amount of electricity that:

(1) exceeds the applicable percentage under subsection (a); and

(2) is generated from renewable energy resources; to comply with the requirement under subsection (b) or (c) for either or both of the two (2) immediately succeeding compliance years.

(g) The commission shall consider the costs incurred by an electricity supplier in complying with subsection (b) or (c), as applicable, as consistent with the requirements of IC 8-1-2-42(d)(1) when ruling on a fuel cost charge requested by the electricity supplier under IC 8-1-2-42(d).

Sec. 6. (a) An electricity supplier that elects to, and fails to, comply with the schedule set forth in section 5(b) of this chapter is no longer eligible for financial incentives as provided in IC 8-1-2-23.1(d) or IC 8-1-8.4-11, as applicable.

(b) An electricity supplier described in subsection (a) shall comply with the schedule set forth in section 5(c) of this chapter beginning in the compliance year in which the electricity supplier fails to comply with the schedule set forth in section 5(b) of this chapter.

Sec. 7. (a) This section applies to an electricity supplier that is required to, and fails to, comply with the schedule set forth in

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1 section 5(c) of this chapter.

2 (b) Beginning January 1, 2011, and annually thereafter, the  
3 commission shall determine whether an electricity supplier is in  
4 compliance with the schedule set forth in section 5(c) of this  
5 chapter. The commission shall make a determination under this  
6 subsection not later than March 1 of each year.

7 (c) If the commission determines that an electricity supplier is  
8 not in compliance with the schedule, the commission may impose  
9 a reasonable monetary penalty in an amount equal to the product  
10 of:

11 (1) the number of megawatt hours of electricity that the  
12 electricity supplier was required to, but failed to, supply  
13 under section 5(c) of this chapter; multiplied by

14 (2) twenty-five dollars (\$25).

15 In determining the amount of the monetary penalty, the  
16 commission shall consider the efforts made by the electricity  
17 supplier in attempting to comply with the schedule.

18 (d) If the commission determines not later than December 31 of  
19 a year that an electricity supplier against whom a monetary  
20 penalty was imposed under subsection (c) has achieved compliance  
21 with the schedule the commission may refund all or part of the  
22 monetary penalty imposed on the electricity supplier for that  
23 calendar year.

24 Sec. 8. (a) An electricity supplier is not required to timely  
25 comply with section 5(b) or 5(c) of this chapter, as applicable, if the  
26 commission determines that the electricity supplier has  
27 demonstrated that the cost of compliance with section 5(b) or 5(c)  
28 of this chapter, as applicable, using the renewable energy resources  
29 available to the electricity supplier would result in an unreasonable  
30 increase in the basic rates and charges for electricity supplied to  
31 customers of the electricity supplier. The commission shall conduct  
32 a public hearing to make a determination under this section.

33 (b) If the commission determines under a hearing conducted  
34 under subsection (a) that the cost of compliance with section 5(b)  
35 or 5(c) of this chapter, as applicable, would result in an  
36 unreasonable rate increase, the commission shall extend the  
37 applicable deadline imposed under section 5(b) or 5(c) of this  
38 chapter. If the commission extends a deadline under this  
39 subsection, the commission shall consider whether subsequent  
40 deadlines imposed under section 5(b) or 5(c) of this chapter, as  
41 applicable, also should be extended.

42 Sec. 9. (a) The commission shall allow an electricity supplier

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that complies with the schedule set forth in section 5(b) or 5(c) of this chapter to recover reasonable and necessary costs incurred in:

- (1) constructing, operating, or maintaining facilities to comply with this chapter;
- (2) generating electricity from, or purchasing electricity generated from, a renewable energy resource;
- (3) purchasing RECs or carbon offset equivalents; or
- (4) complying with federal renewable energy resource portfolio requirements;

by a periodic rate adjustment mechanism.

(b) The commission shall revoke a periodic rate adjustment mechanism allowed under subsection (a) for an electricity supplier that the commission determines:

- (1) is required to; and
- (2) has failed to;

comply with section 5(b) or 5(c) of this chapter.

(c) If the commission revokes a periodic rate adjustment mechanism allowed to an electricity supplier under subsection (b), the electricity supplier may request, in the electricity supplier's next general rate case, recovery of reasonable and necessary costs incurred by the electricity supplier in attempting to comply with section 5(b) or 5(c) of this chapter, as applicable.

Sec. 10. (a) For purposes of calculating RECs to determine an electricity supplier's compliance with section 5(b) or 5(c) of this chapter, as applicable, the following apply:

- (1) Except as provided in subdivision (2), one (1) megawatt hour of electricity generated from renewable energy resources in an Indiana facility equals one and five-tenths (1.5) REC.
- (2) One (1) megawatt hour of electricity generated from a renewable energy resource described in section 4(a)(1) or 4(a)(2) of this chapter that originates in Indiana equals two (2) RECs.

(3) One (1) megawatt hour of electricity that is:

- (A) generated from a renewable energy resource that is directly interconnected to a regional transmission organization whose members include an electricity supplier; and

(B) imported into Indiana;

equals one (1) REC.

(b) An electricity supplier may not apportion all or part of a single megawatt of electricity among more than one (1):

- (1) renewable energy resource; or

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(2) category set forth in subsection (a);  
in order to comply with section 5(b) or 5(c) of this chapter, as applicable.

**Sec. 11.** The Indiana economic development corporation, in consultation with the commission, shall develop a strategy to attract renewable energy component manufacturing and assembly facilities to Indiana.

**Sec. 12.** Beginning in 2016, not later than March 1 of each year, an electricity supplier shall file with the commission a report of the electricity supplier's compliance with this chapter for the preceding calendar year.

**Sec. 13.** The commission shall adopt rules under IC 4-22-2 to implement this chapter. A rule adopted under this section may establish a procedure by which an electricity supplier that initially elects to comply with the schedule set forth in section 5(c) of this chapter may later comply with the schedule set forth in section 5(b) of this chapter.

SECTION 14. IC 8-1-38 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 38. Green Infrastructure Incentive Program**

**Sec. 1.** (a) As used in this chapter, "alternate energy production facility" has the meaning set forth in IC 8-1-2.4-2(b).

(b) The term includes ethanol and biodiesel production facilities.

**Sec. 2.** As used in this chapter, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

**Sec. 3.** As used in this chapter, "green infrastructure project" means the construction, addition, extension, or improvement of an energy utility's plant or equipment to:

(1) provide electric, steam, or gas service to; or

(2) receive electric, steam, or gas service from;

an alternate energy production facility, a renewable energy manufacturing facility, or a renewable energy resource.

**Sec. 4.** As used in this chapter, "renewable energy manufacturing facility" means a facility that primarily manufactures components used by:

(1) an alternate energy production facility; or

(2) a facility that produces electricity from, or conserves electricity from the use of, a renewable energy resource.

**Sec. 5.** As used in this chapter, "renewable energy resource" has the meaning set forth in IC 8-1-8.8-10.

**Sec. 6.** (a) The commission shall encourage green infrastructure

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1 projects by allowing an adjustment of the energy utility's basic  
 2 rates and charges to provide the timely recovery of reasonable and  
 3 necessary costs incurred by the energy utility in connection with a  
 4 green infrastructure project.

5 (b) In allowing the recovery of costs by allowing an adjustment  
 6 of the energy utility's basic rates and charges under subsection (a),  
 7 the commission shall determine the following:

8 (1) The amount of reasonable and necessary costs that the  
 9 energy utility may recover.

10 (2) The rate adjustment mechanism by which the energy  
 11 utility may recover costs.

12 (3) The schedule under which the energy utility may recover  
 13 costs.

14 The commission shall consider whether the energy utility is  
 15 allowed to recover reasonable and necessary costs under  
 16 IC 8-1-37-9 for the same green infrastructure project.

17 Sec. 7. (a) An energy utility must:

18 (1) submit an application to the commission for approval of a  
 19 green infrastructure project for which the energy utility seeks  
 20 to recover costs under section 6 of this chapter; and

21 (2) serve a copy of the application on the Indiana economic  
 22 development corporation established by IC 5-28-3-1.

23 (b) The commission shall prescribe the form for an application  
 24 submitted under subsection (a).

25 (c) Upon receipt of an application under subsection (a), the  
 26 commission shall review the application for completeness. The  
 27 commission may request additional information from the applicant  
 28 as needed.

29 (d) Subject to subsection (e), the commission shall approve or  
 30 deny the application not later than one hundred twenty (120) days  
 31 after the date of the application.

32 (e) The period under subsection (d) does not include the days  
 33 beginning on the date of a request for additional information under  
 34 subsection (c) and ending on the date the requested information is  
 35 provided.

36 (f) If the commission fails to act on or before the deadline  
 37 established in subsection (d) on a complete application submitted  
 38 under subsection (a):

39 (1) the application is considered approved by the commission;  
 40 and

41 (2) the energy utility may implement an adjustment of the  
 42 energy utility's basic rates and charges to provide the timely

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recovery of reasonable and necessary costs incurred by the energy utility in connection with the green infrastructure project.

**Sec. 8. The commission may adopt rules to implement this chapter.**

SECTION 15. IC 8-1-38.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 38.2. Net Metering**

**Sec. 1. As used in this chapter, "customer" means a person, a firm, a corporation, a municipality, or any other government agency that has agreed to pay for retail electric service from an investor owned utility.**

**Sec. 2. As used in this chapter, "eligible net metering customer" means a customer in good standing that owns and operates a net metering facility that has a nameplate capacity less than or equal to one hundred (100) kilowatts.**

**Sec. 3. As used in this chapter, "in good standing" means a customer:**

- (1) whose account is not more than thirty (30) days in arrears; and
- (2) who does not have any legal orders outstanding pertaining to the customer's investor owned electric utility.

**Sec. 4. As used in this chapter, "interconnected" or "interconnection" means the physical, parallel connection of a net metering facility with a distribution facility of an investor owned electric utility.**

**Sec. 5. As used in this chapter, "investor owned electric utility" or "utility" means an electric utility that is financed by the sale of securities and whose business operations are overseen by a board representing the shareholders of the electric utility.**

**Sec. 6. As used in this chapter, "nameplate capacity" means the full load, continuous rating of a generator under specified conditions as designated by the manufacturer.**

**Sec. 7. As used in this chapter, "net metering" means the measurement of the difference between:**

- (1) the electricity that an investor owned electric utility supplies to an eligible net metering customer; and
- (2) the electricity that an eligible net metering customer supplies back to the investor owned electric utility.

**Sec. 8. As used in this chapter, "net metering facility" means an arrangement of equipment that is:**

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- (1) used for the production of electricity from a renewable energy resource (as defined in IC 8-1-8.8-10);
- (2) owned and operated by an eligible net metering customer;
- (3) located on the eligible net metering customer's premises; and
- (4) used primarily to offset all or part of the eligible net metering customer's own electricity requirements.

**Sec. 9.** As used in this chapter, "parallel" means the designed operation of the net metering facility, interconnection equipment, and the investor owned electric utility's system where the instantaneous flow of electrical energy may automatically occur in either direction across the interconnection point between the net metering facility and the electrical utility's distribution system.

**Sec. 10. (a)** An investor owned electric utility shall offer net metering to eligible net metering customers that install a net metering facility.

**(b)** An investor owned electric utility may offer net metering to customers other than eligible net metering customers.

**(c)** An investor owned electric utility that offers net metering to its customers may limit the total amount of net metering facility nameplate capacity under the net metering tariff to one percent (1%) of the most recent summer peak load of the utility.

**Sec. 11.** An investor owned electric utility shall determine an eligible net metering customer's monthly bill as follows:

- (1) Bill charges, credits, rates, and adjustments must be in accordance with the utility's tariff and administrative rules that would apply if the eligible net metering customer did not participate in net metering.
- (2) If the amount of electricity generated during a billing cycle by the net metering customer and delivered to the electric utility is less than the amount of electricity delivered during the same billing cycle by the electric utility to the net metering customer, the electric utility shall bill the net metering customer for the difference between the amounts at the applicable rate under the tariff filed by the electric utility with the commission.
- (3) If the amount of electricity generated during a billing cycle by the net metering customer and delivered to the electric utility exceeds the amount of electricity delivered during the same billing cycle by the electric utility to the net metering customer, the electric utility shall credit the difference between the amounts, measured in kilowatt hours, to the net

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metering customer in the next billing cycle.

(4) If an eligible net metering customer becomes ineligible or otherwise stops participating in an investor owned electric utility's net metering tariff, any remaining credit determined under subdivision (3) reverts to the utility.

Sec. 12. A rule that is:

(1) adopted by the commission and codified at 170 IAC 4-4.2; and

(2) contrary to this chapter; is void.

SECTION 16. IC 32-24-1-5, AS AMENDED BY P.L.163-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) As a condition precedent to filing a complaint in condemnation, and except for an action brought under IC 8-1-13-19 (repealed), a condemnor may enter upon the property as provided in this chapter and must, at least thirty (30) days before filing a complaint, make an offer to purchase the property in the form prescribed in subsection (c). The offer must be served personally or by certified mail upon:

(1) the owner of the property sought to be acquired; or

(2) the owner's designated representative.

(b) If the offer cannot be served personally or by certified mail, or if the owner or the owner's designated representative cannot be found, notice of the offer shall be given by publication in a newspaper of general circulation in the county in which the property is located or in the county where the owner was last known to reside. The notice must be in the following form:

#### NOTICE

TO: \_\_\_\_\_, \_\_\_\_\_ (owner(s)),  
\_\_\_\_\_ (condemnor) needs your property for  
a \_\_\_\_\_ (description  
of project), and will need to acquire the following from you:

\_\_\_\_\_ (general  
description of the property to be acquired). We have made you a formal offer for this property that is now on file in the Clerk's Office in the \_\_\_\_\_ County Court House. Please pick up the offer. If you do not respond to this notice or accept the offer by \_\_\_\_\_ (a date 30 days from 1st date of publication) 20\_\_\_\_, we shall file a suit to condemn the property.

\_\_\_\_\_  
Condemnor

The condemnor must file the offer with the clerk of the circuit court

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with a supporting affidavit that diligent search has been made and that the owner cannot be found. The notice shall be published twice as follows:

(1) One (1) notice immediately.

(2) A subsequent publication at least seven (7) days and not more than twenty-one (21) days after the publication under subdivision (1).

(c) The offer to purchase must be in the following form:

UNIFORM PROPERTY OR EASEMENT  
ACQUISITION OFFER

\_\_\_\_\_ (condemnor) is authorized by Indiana law to obtain your property or an easement across your property for certain public purposes. \_\_\_\_\_ (condemnor) needs (your property) (an easement across your property) for a \_\_\_\_\_ (brief description of the project) and needs to take \_\_\_\_\_ (legal description of the property or easement to be taken; the legal description may be made on a separate sheet and attached to this document if additional space is required)

It is our opinion that the fair market value of the (property) (easement) we want to acquire from you is \$ \_\_\_\_\_, and, therefore, \_\_\_\_\_ (condemnor) offers you \$ \_\_\_\_\_ for the above described (property) (easement). You have thirty (30) days from this date to accept or reject this offer. If you accept this offer, you may expect payment in full within ninety (90) days after signing the documents accepting this offer and executing the easement, and provided there are no difficulties in clearing liens or other problems with title to land. Possession will be required thirty (30) days after you have received your payment in full. HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY PROTECTED RIGHTS:

1. By law, \_\_\_\_\_ (condemnor) is required to make a good faith effort to purchase (your property) (an easement across your property).

2. You do not have to accept this offer and \_\_\_\_\_ (condemnor) is not required to agree to your demands.

3. However, if you do not accept this offer, and we cannot come to an agreement on the acquisition of (your property) (an easement), \_\_\_\_\_ (condemnor) has the right to file suit to condemn and acquire the (property) (easement) in the county in which the property is located.

4. You have the right to seek advice of an attorney, real estate appraiser, or any other person of your choice on this matter.

5. **Unless the condemnor has been issued a certificate of**

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1 **authority from the Indiana utility regulatory commission for**  
 2 **this project under IC 8-1-8.4, you may object to the public**  
 3 **purpose and necessity of this project.**

4 6. If \_\_\_\_\_ (condemnor) files a suit to condemn and  
 5 acquire (your property) (an easement) and the court grants its  
 6 request to condemn, the court will then appoint three appraisers  
 7 who will make an independent appraisal of the (property)  
 8 (easement) to be acquired.

9 7. If we both agree with the court appraisers' report, then the matter  
 10 is settled. However, if either of us disagrees with the appraisers'  
 11 report to the court, either of us has the right to ask for a trial to  
 12 decide what should be paid to you for the (property) (easement)  
 13 condemned.

14 8. If the court appraisers' report is not accepted by either of us, then  
 15 \_\_\_\_\_ (condemnor) has the legal option of depositing  
 16 the amount of the court appraisers' evaluation with the court. And  
 17 if such a deposit is made with the court, \_\_\_\_\_  
 18 (condemnor) is legally entitled to immediate possession of the  
 19 (property) (easement). You may, subject to the approval of the  
 20 court, make withdrawals from the amount deposited with the court.  
 21 Your withdrawal will in no way affect the proceedings of your case  
 22 in court, except that, if the final judgment awarded you is less than  
 23 the withdrawal you have made from the amount deposited, you will  
 24 be required to pay back to the court the amount of the withdrawal  
 25 in excess of the amount of the final judgment.

26 9. The trial will decide the full amount of damages you are to  
 27 receive. Both of us will be entitled to present legal evidence  
 28 supporting our opinions of the fair market value of the property or  
 29 easement. The court's decision may be more or less than this offer.  
 30 You may employ, at your cost, appraisers and attorneys to  
 31 represent you at this time or at any time during the course of the  
 32 proceeding described in this notice. (The condemnor may insert  
 33 here any other information pertinent to this offer or required by  
 34 circumstances or law).

35 10. If you have any questions concerning this matter you may  
 36 contact us at:

37 \_\_\_\_\_  
 38 \_\_\_\_\_  
 39 (full name, mailing and street address, and phone of the  
 40 condemnor)

41 This offer was made to the owner(s):

42 \_\_\_\_\_ of \_\_\_\_\_,

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\_\_\_\_ of \_\_\_\_\_,  
 \_\_\_\_ of \_\_\_\_\_,  
 \_\_\_\_ of \_\_\_\_\_,  
 on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,

BY:

\_\_\_\_\_  
 (signature)

\_\_\_\_\_  
 (printed name and title)

Agent of:

\_\_\_\_\_  
 (condemnor)

If you decide to accept the offer of \$ \_\_\_\_\_ made by  
 \_\_\_\_\_ (condemnor) sign your name below and mail  
 this form to the address indicated above. An additional copy of  
 this offer has been provided for your file.

#### ACCEPTANCE OF OFFER

I (We), \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
 owner(s) of the above described property or interest in property,  
 hereby accept the offer of \$ \_\_\_\_\_ made by \_\_\_\_\_  
 (condemnor) on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

#### NOTARY'S CERTIFICATE

STATE OF \_\_\_\_\_ )

)SS:

COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_ day of  
 \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Printed) NOTARY PUBLIC

(d) If the condemnor has a compelling need to enter upon property  
 to restore utility or transportation services interrupted by disaster or  
 unforeseeable events, the provisions of subsections (a), (b), and (c) do  
 not apply for the purpose of restoration of utility or transportation  
 services interrupted by the disaster or unforeseeable events. However,  
 the condemnor shall be responsible to the property owner for all  
 damages occasioned by the entry, and the condemnor shall immediately

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1 vacate the property entered upon as soon as utility or transportation  
2 services interrupted by the disaster or unforeseeable event have been  
3 restored.

4 SECTION 17. **An emergency is declared for this act.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1360, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

CRAWFORD, Chair

Committee Vote: yeas 20, nays 2.

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1360 be amended to read as follows:

Page 1, delete lines 1 through 15.

Page 2, delete lines 1 through 22.

Page 3, line 39, delete "appointed" and insert "**serving**".

Page 3, line 40, delete "10(b)" and insert "**9(b)**".

Page 3, line 42, delete "11" and insert "**10**".

Page 4, line 2, delete "10" and insert "**9**".

Page 4, delete lines 6 through 7.

Page 4, line 8, delete "10." and insert "**9.**".

Page 4, line 9, delete "established." and insert "**established within the office of energy development.**".

Page 4, line 10, delete "The secretary shall appoint an individual who is qualified by" and insert "**The:**

**(1) director of the office of energy development; or**

**(2) designee of the office of energy development, who must be qualified by knowledge of or experience in the electric utility industry;**

**shall serve as the director of the office.**".

Page 4, delete lines 11 through 12.

Page 4, line 15, delete "secretary;" and insert "**director of the office of energy development, if the director is a designee of the director of the office of energy development;**".

Page 4, line 16, after "the" insert "**director of the office of energy development, subject to the approval of the budget agency, if the director is a designee of the director of the office of energy development;**".

Page 4, delete line 17.

Page 4, line 21, delete "of the" and insert "**of:**

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**(A) the director of the office of energy development, if the director is a designee of the director of the office of energy development; and**

**(B) the budget agency."**

Page 4, delete line 22.

Page 4, line 23, delete "secretary" and insert "**director of the office of energy development**".

Page 4, line 28, delete "11." and insert "**10.**".

Page 4, line 33, delete "12" and insert "**11**".

Page 5, line 14, delete "12." and insert "**11.**".

Page 5, line 20, delete "13" and insert "**12**".

Page 5, line 32, delete "13(b)" and insert "**12(b)**".

Page 5, line 37, delete "13." and insert "**12.**".

Page 5, line 38, delete "12(c)" and insert "**11(c)**".

Page 6, line 5, delete "14." and insert "**13.**".

Page 8, line 4, delete "17" and insert "**16**".

Page 8, line 9, delete "16" and insert "**15**".

Page 8, line 10, delete "15." and insert "**14.**".

Page 8, line 17, delete "16" and insert "**15**".

Page 8, line 20, delete "14" and insert "**13**".

Page 8, line 24, delete "16." and insert "**15.**".

Page 8, line 26, delete "14" and insert "**13**".

Page 8, line 28, delete "14" and insert "**13**".

Page 8, line 41, delete "14" and insert "**13**".

Page 9, line 10, delete "14" and insert "**13**".

Page 9, line 16, delete "14" and insert "**13**".

Page 9, line 21, delete "17." and insert "**16.**".

Page 9, line 32, delete "14" and insert "**13**".

Page 10, line 1, delete "14(c)" and insert "**13(c)**".

Page 10, line 5, delete "14" and insert "**13**".

Page 10, line 10, delete "and defense".

Page 10, between lines 10 and 11, begin a new paragraph and insert:

**"Sec. 17. This chapter shall not be construed to constrain a corporation's access to and immediate use of federal economic stimulus funds for alternative energy projects. Notwithstanding any provision of this chapter, any money that may become available to a corporation in connection with federal economic stimulus programs may not become part of the fund or an account established under this chapter without the consent of the corporation, which shall have access to federal economic stimulus funds:**

**(1) for the same uses; and**



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**(2) in accordance with the same processes;  
as any other energy utility (as defined in IC 8-1-2.5-2) may have  
access to or use federal economic stimulus money."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1360 as printed February 18, 2009.)

WELCH

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Report of the President  
Pro Tempore

Madam President: Pursuant to Senate Rule 65(b), I hereby report that Engrossed House Bill 1360, currently assigned to the Committee on Energy and Environmental Affairs, be reassigned to the Committee on Tax and Fiscal Policy.

LONG

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1360, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2-23.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 23.1. (a) This section applies to a public utility that complies with the schedule set forth in IC 8-1-37-5(b).**

**(b) For purposes of section 23 of this chapter, the construction, addition, extension, or improvement of a public utility's plant or equipment to provide electric or gas service to a customer that:**

**(1) produces biodiesel, ethanol, or any other biofuel; or**

**(2) is a renewable energy manufacturing facility (as defined in IC 8-1-38-4);**

**is in fact used and useful in the public service.**

**(c) This subsection applies to a public utility's general rate proceeding that immediately follows the public utility's investment in a construction, an addition, an extension, or an improvement**

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described in subsection (b). A public utility may accrue for recovery in the rate proceeding depreciation and a return, not to exceed a total of fifty million dollars (\$50,000,000), on the public utility's investment at the rate of return authorized by the commission in the public utility's general rate proceeding immediately preceding the investment. The accrual of a return by a public utility under this subsection:

(1) begins on the date the public utility initially records the investment in the public utility's books or records, as determined by the commission; and

(2) ends on the earlier of the following dates:

(A) The date on which the public utility accrues the full return determined under this subsection.

(B) The date rates are placed in effect after a general rate proceeding that recognizes an investment by a public utility in the public utility's rate base.

(d) Notwithstanding subsection (c), the commission shall revoke a cost recovery approved under this chapter for an electricity supplier that the commission determines has:

(1) elected to; and

(2) failed to;

comply with the schedule set forth in IC 8-1-37-5(b).

(e) This section expires December 31, 2020, unless reauthorized by the general assembly before December 31, 2020. However, a return accrued under this section before January 1, 2021, expires on the appropriate date determined under subsection (c)(2) even if the expiration date occurs after December 31, 2020.

SECTION 2. IC 8-1-8.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

#### **Chapter 8.2. Electric Line Facilities Projects**

**Sec. 1.** As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

**Sec. 2.** As used in this chapter, "electric line facilities" means the following:

(1) Overhead or underground electric transmission lines.

(2) Overhead or underground electric distribution lines.

(3) Electric substations.

**Sec. 3.** As used in this chapter, "electric line facilities project" means an addition to or the construction, operation, maintenance, reconstruction, relocation, upgrading, or removal of electric line facilities.

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**Sec. 4.** As used in this chapter, "electricity supplier" means a public utility that furnishes retail electric service to the public.

**Sec. 5.** As used in this chapter, "public utility" has the meaning set forth in IC 8-1-2-1.

**Sec. 6.** As used in this chapter, "regional transmission organization" refers to the regional transmission organization approved by the Federal Energy Regulatory Commission for the control area in which an electricity supplier operates electric line facilities.

**Sec. 7.** As used in this chapter, "renewable energy resources" has the meaning set forth in IC 8-1-37-4.

**Sec. 8.** This chapter applies to an electricity supplier that complies with the schedule set forth in IC 8-1-37-5(b).

**Sec. 9. (a)** The commission shall encourage electric line facilities projects by creating the following financial incentives for electric line facilities that are reasonable and necessary:

(1) The timely recovery of costs, by means of a periodic rate adjustment mechanism, incurred by an electricity supplier in connection with an electric line facilities project that transmits or distributes electricity generated from renewable energy resources.

(2) The timely recovery of costs, by means of a periodic rate adjustment mechanism, incurred by an electricity supplier taking service under a tariff of, or being assessed costs by the:

(A) regional transmission organization; or

(B) Federal Energy Regulatory Commission.

(b) The commission shall determine a reasonable schedule under which an electricity supplier may recover costs under this section. In making a determination under this subsection, the commission shall consider the impact of the cost recovery on ratepayers of the electricity supplier.

**Sec. 10. (a)** Subject to subsection (h), an electricity supplier must submit an application to the commission for approval of an electric line facilities project for which the electricity supplier seeks to receive a financial incentive created under section 9 of this chapter.

(b) The commission shall prescribe the form for an application submitted under this section.

(c) Upon receipt of an application under subsection (a), the commission shall review the application for completeness. The commission may request additional information from an applicant as needed. The commission may not review an application submitted after December 31, 2020, unless authorized to do so by

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the general assembly before January 1, 2021.

(d) The commission, after notice and hearing, shall issue a determination of an electric line facilities project's eligibility for the financial incentives described in section 9 of this chapter not later than one hundred eighty (180) days after the date of the application. A determination under this subsection must include a finding that the applicant electricity supplier is in compliance with the schedule set forth in IC 8-1-37-5(b).

(e) Subject to subsections (g) and (h), the commission shall approve an application by an electricity supplier for an electric line facilities project that is reasonable and necessary. An electric line facilities project is presumed to be reasonable and necessary if the electric line facilities project:

- (1) is consistent with, or part of, a plan developed by the:
  - (A) regional transmission organization; or
  - (B) Federal Energy Regulatory Commission; or
- (2) transmits or distributes electricity generated from renewable energy resources.

However, an electricity supplier may seek approval from the commission at the electricity supplier's next general rate proceeding to include in the electricity supplier's basic rates the recoverable costs sought in an application approved under this subsection.

(f) This section does not relieve an electricity supplier of the duty to obtain any certificate required under IC 8-1-8.5 or IC 8-1-8.7.

(g) The commission shall not approve a financial incentive for that part of an electric line facilities project that exceeds the lesser of:

- (1) seven percent (7%) of the electricity supplier's rate base approved by the commission in the electricity supplier's most recent general rate proceeding; or
- (2) one hundred fifty million dollars (\$150,000,000).

(h) The commission may not approve a financial incentive under section 9 of this chapter for a particular electricity supplier if the commission has approved a financial incentive under section 9 of this chapter in the preceding twelve (12) months for that electricity supplier, unless the commission determines that approving a particular financial incentive for an electricity supplier on a more timely basis will benefit the electricity supplier's ratepayers.

(i) A financial incentive that the commission approves before January 1, 2021, or that an electricity supplier applies for before

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January 1, 2021, and that is subsequently approved, expires on the earlier of the following dates:

- (1) The date on which the electricity supplier accrues the full recovery amount authorized by the commission.
- (2) The date specified by the commission in its approval of the financial incentive.

**Sec. 11.** The commission shall revoke all financial incentives approved under this chapter for an electricity supplier that the commission determines has:

- (1) elected to; and
- (2) failed to;

comply with the schedule set forth in IC 8-1-37-5(b).

SECTION 3. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 8.4. Certificate of Authority for Certain Projects**

**Sec. 1.** As used in this chapter, "electric line facilities" means overhead and underground electric transmission and distribution lines, electric substations, and overhead and underground telecommunication lines associated with electric transmission and distribution.

**Sec. 2.** As used in this chapter, "project" means the proposed activity of a public utility described in section 6 of this chapter.

**Sec. 3.** As used in this chapter, "public utility" has the meaning set forth in IC 8-1-2-1, except as provided in IC 8-1-2-1.1.

**Sec. 4.** A public utility that proposes to take, acquire, condemn, or appropriate land, real estate, or any interest in land or real estate for one (1) or more of the following purposes with respect to electric line facilities may elect to follow the procedure in this chapter instead of the procedures in IC 32-24-1:

- (1) Construction.
- (2) Reconstruction.
- (3) Operation.
- (4) Maintenance.
- (5) Relocation.
- (6) Upgrade.
- (7) Removal.
- (8) Additions.

**Sec. 5.** If a public utility makes an election under section 4 of this chapter, the public utility shall:

- (1) file a petition with the commission for a certificate of authority for the project; and

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(2) publish notice under IC 5-3-1 in each county in Indiana in which the project is to occur of:

(A) the project; and

(B) a public hearing to be held by the commission on the project in one (1) or more of those counties.

Sec. 6. The commission shall grant intervenor status in the certificate of authority proceeding to any person that petitions the commission for intervenor status.

Sec. 7. (a) After the public hearing required by section 5 of this chapter, the commission shall issue a certificate of authority under this chapter authorizing the project if in the commission proceeding the public utility demonstrates the following to the satisfaction of the commission:

(1) At least one (1) of the following applies:

(A) The project is expected to result in intrastate benefits or interstate benefits, or both.

(B) Except with respect to the removal of electric line facilities, the electric line facilities that are the subject of the project are needed or will be needed to furnish retail electric service or wholesale electric service, or both, in Indiana or outside Indiana, or both.

(C) The project is consistent with or part of a plan developed by a regional transmission organization approved by the Federal Energy Regulatory Commission, or a successor or similar organization, for the control area applicable to the electric line facilities.

(2) Except with respect to the removal of electric line facilities, the following for the project are reasonable:

(A) The site.

(B) The location.

(C) The general route, width, and beginning and end points of the right-of-way.

(b) After the public hearing required by section 5 of this chapter, the commission may deny the petition if the public utility fails to demonstrate the factors listed in subsection (a) to the satisfaction of the commission.

Sec. 8. (a) The commission:

(1) shall promptly review a petition filed under section 5 of this chapter for completeness;

(2) may request additional information it considers necessary to aid in its review; and

(3) subject to subsection (b), shall act under section 7 of this

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chapter on a petition not later than one hundred twenty (120) days after the date of the petition.

(b) The period under subsection (a)(3) does not include the days beginning on the date of a request for additional information under subsection (a)(2) and ending on the date the requested information is provided.

(c) If the commission fails to act in a timely manner under subsection (a)(3):

(1) the factors listed in section 7(a) of this chapter are considered to have been demonstrated to the satisfaction of the commission; and

(2) the certificate of authority for which the petition was filed under section 5 of this chapter is considered to have been issued by the commission under section 7 of this chapter.

Sec. 9. Upon the request of the public utility, the commission shall certify the issuance of a certificate of authority under section 7 of this chapter.

Sec. 10. If:

(1) an action in eminent domain is commenced by a public utility against an owner of land, real estate, or an interest in land or real estate to which a certificate of authority issued under section 7 of this chapter applies;

(2) the public utility files in that action the certificate of authority as certified under section 9 of this chapter; and

(3) the court in that action finds that the public utility has made an offer to purchase the land, real estate, or interest in land or real estate under IC 32-24-1-3(b)(2) and IC 32-24-1-5;

the court shall issue to the public utility an order of appropriation and appointment of appraisers under IC 32-24-1-7 for the land, real estate, or interest in land or real estate and assess compensation and damages for the appropriation under IC 32-24-1.

Sec. 11. Upon review of an appropriate petition filed by a public utility, the commission shall encourage investment in electric line facilities by creating financial incentives that the commission finds to be reasonable and necessary.

Sec. 12. If a public utility does not petition under this chapter for a certificate of authority for specific electric line facilities:

(1) nothing in this chapter diminishes:

(A) the public utility's right of eminent domain for those electric line facilities; or

(B) the rights of any person in any eminent domain

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proceeding; and

**(2) the election by a public utility to not petition under this chapter for a certificate of authority may not be raised as an objection in any eminent domain proceeding by the owner under IC 32-24-1-8.**

SECTION 4. IC 8-1-8.8-2, AS AMENDED BY P.L.175-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. As used in this chapter, "clean coal and energy projects" means any of the following:

(1) Any of the following projects:

(A) Projects at new energy production or generating facilities that employ the use of clean coal technology and that produce energy, including substitute natural gas, primarily from coal, or gases derived from coal, from the geological formation known as the Illinois Basin.

(B) Projects to provide advanced technologies that reduce regulated air emissions from existing energy production or generating plants that are fueled primarily by coal or gases from coal from the geological formation known as the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment.

(C) Projects to provide electric transmission facilities to serve a new energy production or generating facility **or a low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility.**

(D) Projects that produce substitute natural gas from Indiana coal by construction and operation of a coal gasification facility.

**(E) Projects or potential projects that employ the use of low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating technologies to produce electricity.**

(2) Projects to develop alternative energy sources, including renewable energy projects ~~and~~ **or** coal gasification facilities.

(3) The purchase of fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility.**

(4) Projects described in subdivisions (1) through ~~(3)~~ **(2)** that use coal bed methane.

SECTION 5. IC 8-1-8.8-6, AS AMENDED BY P.L.175-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2009]: Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) or owner of a coal gasification facility that:

- (1) proposes to construct or repower a new energy production or generating facility;
- (2) proposes to construct or repower a project described in section 2(1) or 2(2) of this chapter;
- (3) undertakes a project to develop alternative energy sources, including renewable energy projects or **coal gasification facilities; or**
- (4) purchases fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility.**

SECTION 6. IC 8-1-8.8-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.5. (a) As used in this chapter, "low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility" means an energy production or generation facility, including transmission lines and equipment described in subsection (b), that is:

- (1) installed or constructed at the site of a facility that supplies electricity to Indiana retail customers as of July 1, 2009; and
- (2) intended to produce:
  - (A) no carbon dioxide as a byproduct of the production or generation of energy; or
  - (B) less carbon dioxide per megawatt hour of electricity generated than is produced per megawatt hour of electricity generated by a coal fired or other fossil fuel based energy production or generating facility.

(b) The term includes the transmission lines and other associated equipment employed specifically to serve a low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility.

SECTION 7. IC 8-1-8.8-8, AS AMENDED BY P.L.175-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) As used in this chapter, "new energy **production or** generating facility" refers to a generation or coal gasification facility that satisfies all of the following:

- (1) The facility produces energy primarily from coal or gases from coal from the geological formation known as the Illinois Basin.
- (2) The facility is a:
  - (A) newly constructed or newly repowered energy ~~generation~~

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plant; or

(B) newly constructed ~~generation~~ capacity expansion at an existing ~~facility~~; **plant**;

dedicated primarily to serving Indiana retail customers.

(3) The repowering, construction, or expansion of the facility was begun by an Indiana utility after July 1, 2002.

(4) Except for a facility that is a clean coal and energy project under section 2(2) of this chapter, the facility has an aggregate rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

(b) The term includes the transmission lines, gas transportation facilities, and associated equipment employed specifically to serve a new energy generating or coal gasification facility.

SECTION 8. IC 8-1-8.8-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.5. As used in this chapter, "qualified utility system expenses" means any preconstruction costs associated with the study, analysis, or development of a:**

**(1) new energy production or generating facility; or**

**(2) new low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility;**

**including siting, design, licensing, and permitting costs.**

SECTION 9. IC 8-1-8.8-9, AS AMENDED BY P.L.175-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9. As used in this chapter, "qualified utility system property" means any:**

**(1) new energy ~~production or~~ generating ~~or coal gasification~~ facility; or**

**(2) new low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility;**

used, or to be used, in whole or in part, by an energy utility to provide retail energy service (as defined in IC 8-1-2.5-3) regardless of whether that service is provided under IC 8-1-2.5 or another provision of this article.

SECTION 10. IC 8-1-8.8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11. (a) The commission shall encourage clean coal and energy projects by creating the following financial incentives for clean coal and energy projects, if the projects are found to be reasonable and necessary:**

**(1) The timely recovery of costs incurred during construction and**

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operation of projects described in section 2(1) or 2(2) of this chapter.

(2) The authorization of up to three (3) percentage points on the return on shareholder equity that would otherwise be allowed to be earned on projects described in subdivision (1).

(3) Financial incentives for the purchase of fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility**, including cost recovery and the incentive available under subdivision (2).

(4) Financial incentives for projects to develop alternative energy sources, including renewable energy projects **or coal gasification facilities**.

(5) Other financial incentives the commission considers appropriate.

(b) An eligible business must file an application to the commission for approval of a clean coal and energy project under this section. This chapter does not relieve an eligible business of the duty to obtain any certificate required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter for one (1) project may file a single application for all necessary certificates. If a single application is filed, the commission shall consider all necessary certificates at the same time.

(c) The commission shall promptly review an application filed under this section for completeness. The commission may request additional information the commission considers necessary to aid in its review.

(d) The commission shall, after notice and hearing, issue a determination of a project's eligibility for the financial incentives described in subsection (a) not later than one hundred twenty (120) days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding.

SECTION 11. IC 8-1-8.8-12, AS AMENDED BY P.L.175-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) The commission shall provide financial incentives to eligible businesses for:

(1) new energy ~~producing and~~ **production or** generating facilities; **and**

(2) **new low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facilities;**

in the form of timely recovery of the costs incurred in connection with the **study, analysis, development, siting, design, licensing,**

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**permitting**, construction, repowering, expansion, operation, or maintenance of the facilities.

(b) An eligible business seeking authority to timely recover the costs described in subsection (a) must apply to the commission for approval of a rate adjustment mechanism in the manner determined by the commission.

(c) An application must include the following:

- (1) A schedule for the completion of construction, repowering, or expansion of the ~~new energy generating or coal gasification~~ facility for which rate relief is sought.
- (2) Copies of the most recent integrated resource plan filed with the commission, if applicable.
- (3) The amount of capital investment by the eligible business in the ~~new energy generating or coal gasification~~ facility.
- (4) Other information the commission considers necessary.

(d) The commission shall allow an eligible business to recover:

- (1) the costs associated with qualified utility system property; **and**
- (2) **qualified utility system expenses;**

if the eligible business provides substantial documentation that the expected costs ~~associated with qualified utility system property~~ and **expenses** and the schedule for incurring those costs **and expenses** are reasonable and necessary.

(e) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or non-carbon dioxide emitting energy production or generating facility** if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable and necessary.

(f) A retail rate adjustment mechanism proposed by an eligible business under this section may be based on actual or forecasted data. If forecast data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs."

Page 2, line 10, delete "of:" and insert "**of renewable energy resources (as defined in IC 8-1-37-4) for the production of electricity; and**".

Page 2, delete lines 11 through 32.

Page 2, line 33, delete "(3)" and insert "(2)".

Page 3, line 4, delete "9(b)" and insert "**8(b)**".

Page 3, delete lines 5 through 6.

Page 3, line 7, delete "7." and insert "**6**".

Page 3, line 8, delete "9" and insert "**8**".

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Page 3, line 10, delete "8." and insert "7."

Page 3, line 12, delete "9." and insert "8."

Page 3, line 13, delete "development." and insert **"development to provide assistance to corporations in the development of alternative energy projects."**

Page 3, delete lines 41 through 42.

Delete pages 4 through 7.

Page 8, delete lines 1 through 33.

Page 8, line 34, delete "16. (a)" and insert "9."

Page 8, line 35, delete "Any rules adopted by the office under this".

Page 8, delete lines 36 through 42.

Page 9, delete lines 1 through 23.

Page 9, line 24, delete "17." and insert "10."

Page 9, line 26, delete "Notwithstanding".

Page 9, delete lines 27 through 42.

Page 10, delete lines 1 through 7, begin a new paragraph and insert:  
**"SECTION 17. IC 8-1-37 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:**

**Chapter 37. Renewable Energy Development**

**Sec. 1. (a) As used in this chapter, "electricity supplier" means a public utility (as defined in IC 8-1-2-1) that furnishes retail electric service to the public.**

**(b) The term does not include a utility that is a:**

- (1) municipally owned utility (as defined in IC 8-1-2-1(h));**
- (2) corporation organized under IC 8-1-13; or**
- (3) corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.**

**Sec. 2. As used in this chapter, "regional transmission organization" has the meaning set forth in IC 8-1-8.2-6.**

**Sec. 3. As used in this chapter, "renewable energy credit", or "REC", means one (1) megawatt hour of electricity that is:**

- (1) generated from a renewable energy resource described in section 4(a) of this chapter;**
- (2) quantifiable; and**
- (3) possessed by not more than one (1) entity at a time.**

**Sec. 4. (a) As used in this chapter, "renewable energy resources" includes the following sources, technologies, and programs for the production or conservation of electricity:**

- (1) Methane systems that convert waste products, including animal, food, and plant waste, into electricity or fuel for the**

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production of electricity.

(2) Methane recovered from landfills or coal mines.

(3) Wind.

(4) Solar photovoltaic cells and panels.

(5) Clean coal and energy projects (as defined in IC 8-1-8.8-2), including plant efficiency measures.

(6) Dedicated crops grown for energy production.

(7) Energy from waste to energy facilities.

(8) Non-carbon dioxide emitting or low carbon dioxide emitting electricity generating technologies placed in service after June 30, 2009.

(9) Hydropower.

(10) Demand side management, conservation, or energy efficiency programs that:

(A) reduce electricity consumption; or

(B) implement load management or demand response technologies that shift a customer's electric load from periods of higher demand to periods of lower demand.

(11) Combined heat and power systems that:

(A) use natural gas or renewable energy resources as feedstock; and

(B) achieve at least seventy percent (70%) overall efficiency.

(12) Geothermal hot water district heating systems.

(13) Electricity generated through net metering that is regulated under rules adopted by the commission or other Indiana law.

(14) Energy storage facilities.

(15) Integrated gasification combined cycle (IGCC) technology to produce synthetic gas that is used:

(A) to generate electricity; or

(B) as a substitute for natural gas;

regardless of the fuel source used to produce the synthetic gas.

(16) A renewable energy resource listed in IC 8-1-8.8-10 to the extent the renewable energy resource is not already described in this subsection.

(b) Except as provided in subsection (a)(7), the term does not include energy from the incineration, burning, or heating of the following:

(1) Garbage.

(2) General household, institutional, or commercial waste.

(3) Industrial lunchroom or office waste.

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- (4) Landscape waste.
- (5) Construction or demolition debris.
- (6) Feedstock that is municipal, food, plant, industrial, or animal waste from outside Indiana.

**Sec. 5. (a)** Each electricity supplier shall supply electricity under a schedule set forth in either subsection (b) or (c).

**(b)** In order to qualify for a financial incentive under IC 8-1-2-23.1 or IC 8-1-8.4-9, an electricity supplier shall supply electricity that is generated from renewable energy resources described in section 4(a) of this chapter to Indiana customers as a percentage of the total electricity supplied by the electricity supplier to Indiana customers during a calendar year as follows:

- (1) Not later than the calendar year ending December 31, 2010, at least three percent (3%).
- (2) Not later than the calendar year ending December 31, 2015, at least six percent (6%).
- (3) Not later than the calendar year ending December 31, 2020, at least ten percent (10%).
- (4) Not later than the calendar year ending December 31, 2025, at least fifteen percent (15%).

For purposes of this subsection, electricity is measured in megawatt hours.

**(c)** An electricity supplier that elects not to comply with subsection (b) shall supply electricity that is generated from renewable energy resources described in section 4(a) of this chapter to Indiana customers as a percentage of the total electricity supplied by the electricity supplier to Indiana customers during a calendar year as follows:

- (1) Not later than the calendar year ending December 31, 2010, at least one and five-tenths percent (1.5%).
- (2) Not later than the calendar year ending December 31, 2015, at least four percent (4%).
- (3) Not later than the calendar year ending December 31, 2020, at least seven percent (7%).
- (4) Not later than the calendar year ending December 31, 2025, at least ten percent (10%).

For purposes of this subsection, electricity is measured in megawatt hours.

**(d)** An electricity supplier may own or purchase RECs or carbon offset equivalents to comply with subsection (b) or (c), as applicable.

**(e)** An electricity supplier may not use a renewable energy

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resource described in section 4(a)(5), 4(a)(8), 4(a)(10), or 4(a)(11) of this chapter to generate more than twenty-five percent (25%) of the electricity that the electricity supplier is required to supply under subsection (b) or (c), as applicable.

(f) If an electricity supplier exceeds the applicable percentage under subsection (b) or (c) in a compliance year, the electricity supplier may carry forward the amount of electricity that:

(1) exceeds the applicable percentage under subsection (a);  
and

(2) is generated from renewable energy resources;  
to comply with the requirement under subsection (b) or (c) for either or both of the two (2) immediately succeeding compliance years.

(g) The commission shall consider the costs incurred by an electricity supplier in complying with subsection (b) or (c), as applicable, as consistent with the requirements of IC 8-1-2-42(d)(1) when ruling on a fuel cost charge requested by the electricity supplier under IC 8-1-2-42(d).

Sec. 6. (a) An electricity supplier that elects to, and fails to, comply with the schedule set forth in section 5(b) of this chapter is no longer eligible for financial incentives as provided in IC 8-1-2-23.1(d) or IC 8-1-8.4-11, as applicable.

(b) An electricity supplier described in subsection (a) shall comply with the schedule set forth in section 5(c) of this chapter beginning in the compliance year in which the electricity supplier fails to comply with the schedule set forth in section 5(b) of this chapter.

Sec. 7. (a) This section applies to an electricity supplier that is required to, and fails to, comply with the schedule set forth in section 5(c) of this chapter.

(b) Beginning January 1, 2011, and annually thereafter, the commission shall determine whether an electricity supplier is in compliance with the schedule set forth in section 5(c) of this chapter. The commission shall make a determination under this subsection not later than March 1 of each year.

(c) If the commission determines that an electricity supplier is not in compliance with the schedule, the commission may impose a reasonable monetary penalty in an amount equal to the product of:

(1) the number of megawatt hours of electricity that the electricity supplier was required to, but failed to, supply under section 5(c) of this chapter; multiplied by

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(2) twenty-five dollars (\$25).

In determining the amount of the monetary penalty, the commission shall consider the efforts made by the electricity supplier in attempting to comply with the schedule.

(d) If the commission determines not later than December 31 of a year that an electricity supplier against whom a monetary penalty was imposed under subsection (c) has achieved compliance with the schedule the commission may refund all or part of the monetary penalty imposed on the electricity supplier for that calendar year.

Sec. 8. (a) An electricity supplier is not required to timely comply with section 5(b) or 5(c) of this chapter, as applicable, if the commission determines that the electricity supplier has demonstrated that the cost of compliance with section 5(b) or 5(c) of this chapter, as applicable, using the renewable energy resources available to the electricity supplier would result in an unreasonable increase in the basic rates and charges for electricity supplied to customers of the electricity supplier. The commission shall conduct a public hearing to make a determination under this section.

(b) If the commission determines under a hearing conducted under subsection (a) that the cost of compliance with section 5(b) or 5(c) of this chapter, as applicable, would result in an unreasonable rate increase, the commission shall extend the applicable deadline imposed under section 5(b) or 5(c) of this chapter. If the commission extends a deadline under this subsection, the commission shall consider whether subsequent deadlines imposed under section 5(b) or 5(c) of this chapter, as applicable, also should be extended.

Sec. 9. (a) The commission shall allow an electricity supplier that complies with the schedule set forth in section 5(b) or 5(c) of this chapter to recover reasonable and necessary costs incurred in:

- (1) constructing, operating, or maintaining facilities to comply with this chapter;
- (2) generating electricity from, or purchasing electricity generated from, a renewable energy resource;
- (3) purchasing RECs or carbon offset equivalents; or
- (4) complying with federal renewable energy resource portfolio requirements;

by a periodic rate adjustment mechanism.

(b) The commission shall revoke a periodic rate adjustment mechanism allowed under subsection (a) for an electricity supplier that the commission determines:

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(1) is required to; and  
 (2) has failed to;  
 comply with section 5(b) or 5(c) of this chapter.

(c) If the commission revokes a periodic rate adjustment mechanism allowed to an electricity supplier under subsection (b), the electricity supplier may request, in the electricity supplier's next general rate case, recovery of reasonable and necessary costs incurred by the electricity supplier in attempting to comply with section 5(b) or 5(c) of this chapter, as applicable.

Sec. 10. (a) For purposes of calculating RECs to determine an electricity supplier's compliance with section 5(b) or 5(c) of this chapter, as applicable, the following apply:

(1) Except as provided in subdivision (2), one (1) megawatt hour of electricity generated from renewable energy resources in an Indiana facility equals one and five-tenths (1.5) REC.

(2) One (1) megawatt hour of electricity generated from a renewable energy resource described in section 4(a)(1) or 4(a)(2) of this chapter that originates in Indiana equals two (2) RECs.

(3) One (1) megawatt hour of electricity that is:

(A) generated from a renewable energy resource that is directly interconnected to a regional transmission organization whose members include an electricity supplier; and

(B) imported into Indiana;  
 equals one (1) REC.

(b) An electricity supplier may not apportion all or part of a single megawatt of electricity among more than one (1):

- (1) renewable energy resource; or
- (2) category set forth in subsection (a);

in order to comply with section 5(b) or 5(c) of this chapter, as applicable.

Sec. 11. The Indiana economic development corporation, in consultation with the commission, shall develop a strategy to attract renewable energy component manufacturing and assembly facilities to Indiana.

Sec. 12. Beginning in 2016, not later than March 1 of each year, an electricity supplier shall file with the commission a report of the electricity supplier's compliance with this chapter for the preceding calendar year.

Sec. 13. The commission shall adopt rules under IC 4-22-2 to implement this chapter. A rule adopted under this section may

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establish a procedure by which an electricity supplier that initially elects to comply with the schedule set forth in section 5(c) of this chapter may later comply with the schedule set forth in section 5(b) of this chapter.

SECTION 12. IC 8-1-38 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 38. Green Infrastructure Incentive Program**

**Sec. 1. (a)** As used in this chapter, "alternate energy production facility" has the meaning set forth in IC 8-1-2.4-2(b).

**(b)** The term includes ethanol and biodiesel production facilities.

**Sec. 2.** As used in this chapter, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

**Sec. 3.** As used in this chapter, "green infrastructure project" means the construction, addition, extension, or improvement of an energy utility's plant or equipment to:

- (1) provide electric, steam, or gas service to; or
- (2) receive electric, steam, or gas service from;

an alternate energy production facility, a renewable energy manufacturing facility, or a renewable energy resource.

**Sec. 4.** As used in this chapter, "renewable energy manufacturing facility" means a facility that primarily manufactures components used by:

- (1) an alternate energy production facility; or
- (2) a facility that produces electricity from, or conserves electricity from the use of, a renewable energy resource.

**Sec. 5.** As used in this chapter, "renewable energy resource" has the meaning set forth in IC 8-1-8.8-10.

**Sec. 6. (a)** The commission shall encourage green infrastructure projects by allowing an adjustment of the energy utility's basic rates and charges to provide the timely recovery of reasonable and necessary costs incurred by the energy utility in connection with a green infrastructure project.

**(b)** In allowing the recovery of costs by allowing an adjustment of the energy utility's basic rates and charges under subsection (a), the commission shall determine the following:

- (1) The amount of reasonable and necessary costs that the energy utility may recover.
- (2) The rate adjustment mechanism by which the energy utility may recover costs.
- (3) The schedule under which the energy utility may recover costs.

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The commission shall consider whether the energy utility is allowed to recover reasonable and necessary costs under IC 8-1-37-9 for the same green infrastructure project.

**Sec. 7. (a) An energy utility must:**

- (1) submit an application to the commission for approval of a green infrastructure project for which the energy utility seeks to recover costs under section 6 of this chapter; and
- (2) serve a copy of the application on the Indiana economic development corporation established by IC 5-28-3-1.

(b) The commission shall prescribe the form for an application submitted under subsection (a).

(c) Upon receipt of an application under subsection (a), the commission shall review the application for completeness. The commission may request additional information from the applicant as needed.

(d) Subject to subsection (e), the commission shall approve or deny the application not later than one hundred twenty (120) days after the date of the application.

(e) The period under subsection (d) does not include the days beginning on the date of a request for additional information under subsection (c) and ending on the date the requested information is provided.

(f) If the commission fails to act on or before the deadline established in subsection (d) on a complete application submitted under subsection (a):

- (1) the application is considered approved by the commission; and
- (2) the energy utility may implement an adjustment of the energy utility's basic rates and charges to provide the timely recovery of reasonable and necessary costs incurred by the energy utility in connection with the green infrastructure project.

**Sec. 8. The commission may adopt rules to implement this chapter.**

SECTION 15. IC 8-1-38.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 38.2. Net Metering**

**Sec. 1.** As used in this chapter, "customer" means a person, a firm, a corporation, a municipality, or any other government agency that has agreed to pay for retail electric service from an investor owned utility.

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**Sec. 2.** As used in this chapter, "eligible net metering customer" means a customer in good standing that owns and operates a net metering facility that has a nameplate capacity less than or equal to one hundred (100) kilowatts.

**Sec. 3.** As used in this chapter, "in good standing" means a customer:

- (1) whose account is not more than thirty (30) days in arrears; and
- (2) who does not have any legal orders outstanding pertaining to the customer's investor owned electric utility.

**Sec. 4.** As used in this chapter, "interconnected" or "interconnection" means the physical, parallel connection of a net metering facility with a distribution facility of an investor owned electric utility.

**Sec. 5.** As used in this chapter, "investor owned electric utility" or "utility" means an electric utility that is financed by the sale of securities and whose business operations are overseen by a board representing the shareholders of the electric utility.

**Sec. 6.** As used in this chapter, "nameplate capacity" means the full load, continuous rating of a generator under specified conditions as designated by the manufacturer.

**Sec. 7.** As used in this chapter, "net metering" means the measurement of the difference between:

- (1) the electricity that an investor owned electric utility supplies to an eligible net metering customer; and
- (2) the electricity that an eligible net metering customer supplies back to the investor owned electric utility.

**Sec. 8.** As used in this chapter, "net metering facility" means an arrangement of equipment that is:

- (1) used for the production of electricity from a renewable energy resource (as defined in IC 8-1-8.8-10);
- (2) owned and operated by an eligible net metering customer;
- (3) located on the eligible net metering customer's premises; and
- (4) used primarily to offset all or part of the eligible net metering customer's own electricity requirements.

**Sec. 9.** As used in this chapter, "parallel" means the designed operation of the net metering facility, interconnection equipment, and the investor owned electric utility's system where the instantaneous flow of electrical energy may automatically occur in either direction across the interconnection point between the net metering facility and the electrical utility's distribution system.

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**Sec. 10. (a) An investor owned electric utility shall offer net metering to eligible net metering customers that install a net metering facility.**

**(b) An investor owned electric utility may offer net metering to customers other than eligible net metering customers.**

**(c) An investor owned electric utility that offers net metering to its customers may limit the total amount of net metering facility nameplate capacity under the net metering tariff to one percent (1%) of the most recent summer peak load of the utility.**

**Sec. 11. An investor owned electric utility shall determine an eligible net metering customer's monthly bill as follows:**

**(1) Bill charges, credits, rates, and adjustments must be in accordance with the utility's tariff and administrative rules that would apply if the eligible net metering customer did not participate in net metering.**

**(2) If the amount of electricity generated during a billing cycle by the net metering customer and delivered to the electric utility is less than the amount of electricity delivered during the same billing cycle by the electric utility to the net metering customer, the electric utility shall bill the net metering customer for the difference between the amounts at the applicable rate under the tariff filed by the electric utility with the commission.**

**(3) If the amount of electricity generated during a billing cycle by the net metering customer and delivered to the electric utility exceeds the amount of electricity delivered during the same billing cycle by the electric utility to the net metering customer, the electric utility shall credit the difference between the amounts, measured in kilowatt hours, to the net metering customer in the next billing cycle.**

**(4) If an eligible net metering customer becomes ineligible or otherwise stops participating in an investor owned electric utility's net metering tariff, any remaining credit determined under subdivision (3) reverts to the utility.**

**Sec. 12. A rule that is:**

**(1) adopted by the commission and codified at 170 IAC 4-4.2; and**

**(2) contrary to this chapter;**

**is void.**

**SECTION 16. IC 32-24-1-5, AS AMENDED BY P.L.163-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) As a condition precedent to filing a**

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complaint in condemnation, and except for an action brought under IC 8-1-13-19 (repealed), a condemnor may enter upon the property as provided in this chapter and must, at least thirty (30) days before filing a complaint, make an offer to purchase the property in the form prescribed in subsection (c). The offer must be served personally or by certified mail upon:

- (1) the owner of the property sought to be acquired; or
- (2) the owner's designated representative.

(b) If the offer cannot be served personally or by certified mail, or if the owner or the owner's designated representative cannot be found, notice of the offer shall be given by publication in a newspaper of general circulation in the county in which the property is located or in the county where the owner was last known to reside. The notice must be in the following form:

#### NOTICE

TO: \_\_\_\_\_, \_\_\_\_\_ (owner(s)),  
 \_\_\_\_\_ (condemnor) needs your property for  
 a \_\_\_\_\_ (description  
 of project), and will need to acquire the following from you:

\_\_\_\_\_ (general  
 description of the property to be acquired). We have made you a formal  
 offer for this property that is now on file in the Clerk's Office in the  
 \_\_\_\_\_ County Court House. Please pick up the offer. If you do not  
 respond to this notice or accept the offer by \_\_\_\_ (a date 30 days from  
 1st date of publication) 20\_\_\_\_, we shall file a suit to condemn the  
 property.

\_\_\_\_\_  
 Condemnor

The condemnor must file the offer with the clerk of the circuit court with a supporting affidavit that diligent search has been made and that the owner cannot be found. The notice shall be published twice as follows:

- (1) One (1) notice immediately.
- (2) A subsequent publication at least seven (7) days and not more than twenty-one (21) days after the publication under subdivision (1).
- (c) The offer to purchase must be in the following form:

#### UNIFORM PROPERTY OR EASEMENT ACQUISITION OFFER

\_\_\_\_\_ (condemnor) is authorized by Indiana law to obtain  
 your property or an easement across your property for certain public  
 purposes. \_\_\_\_\_ (condemnor) needs (your property) (an

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easement across your property) for a \_\_\_\_\_  
 (brief description of the project) and needs to take  
 \_\_\_\_\_ (legal description of the property or easement  
 to be taken; the legal description may be made on a separate sheet and  
 attached to this document if additional space is required)

It is our opinion that the fair market value of the (property) (easement)  
 we want to acquire from you is \$ \_\_\_\_\_, and, therefore, \_\_\_\_\_  
 (condemnor) offers you \$ \_\_\_\_\_ for the above described (property)  
 (easement). You have thirty (30) days from this date to accept or reject  
 this offer. If you accept this offer, you may expect payment in full  
 within ninety (90) days after signing the documents accepting this offer  
 and executing the easement, and provided there are no difficulties in  
 clearing liens or other problems with title to land. Possession will be  
 required thirty (30) days after you have received your payment in full.  
 HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND  
 LEGALLY PROTECTED RIGHTS:

1. By law, \_\_\_\_\_ (condemnor) is required to make a  
 good faith effort to purchase (your property) (an easement across  
 your property).
2. You do not have to accept this offer and \_\_\_\_\_  
 (condemnor) is not required to agree to your demands.
3. However, if you do not accept this offer, and we cannot come to  
 an agreement on the acquisition of (your property) (an easement),  
 \_\_\_\_\_ (condemnor) has the right to file suit to condemn  
 and acquire the (property) (easement) in the county in which the  
 property is located.
4. You have the right to seek advice of an attorney, real estate  
 appraiser, or any other person of your choice on this matter.
5. **Unless the condemnor has been issued a certificate of  
 authority from the Indiana utility regulatory commission for  
 this project under IC 8-1-8.4,** you may object to the public  
 purpose and necessity of this project.
6. If \_\_\_\_\_ (condemnor) files a suit to condemn and  
 acquire (your property) (an easement) and the court grants its  
 request to condemn, the court will then appoint three appraisers  
 who will make an independent appraisal of the (property)  
 (easement) to be acquired.
7. If we both agree with the court appraisers' report, then the matter  
 is settled. However, if either of us disagrees with the appraisers'  
 report to the court, either of us has the right to ask for a trial to  
 decide what should be paid to you for the (property) (easement)  
 condemned.

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8. If the court appraisers' report is not accepted by either of us, then \_\_\_\_\_ (condemnor) has the legal option of depositing the amount of the court appraisers' evaluation with the court. And if such a deposit is made with the court, \_\_\_\_\_ (condemnor) is legally entitled to immediate possession of the (property) (easement). You may, subject to the approval of the court, make withdrawals from the amount deposited with the court. Your withdrawal will in no way affect the proceedings of your case in court, except that, if the final judgment awarded you is less than the withdrawal you have made from the amount deposited, you will be required to pay back to the court the amount of the withdrawal in excess of the amount of the final judgment.

9. The trial will decide the full amount of damages you are to receive. Both of us will be entitled to present legal evidence supporting our opinions of the fair market value of the property or easement. The court's decision may be more or less than this offer. You may employ, at your cost, appraisers and attorneys to represent you at this time or at any time during the course of the proceeding described in this notice. (The condemnor may insert here any other information pertinent to this offer or required by circumstances or law).

10. If you have any questions concerning this matter you may contact us at:

\_\_\_\_\_  
 \_\_\_\_\_  
 (full name, mailing and street address, and phone of the condemnor)

This offer was made to the owner(s):

\_\_\_\_\_ of \_\_\_\_\_,  
 \_\_\_\_\_ of \_\_\_\_\_,  
 \_\_\_\_\_ of \_\_\_\_\_,  
 \_\_\_\_\_ of \_\_\_\_\_,

on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,

BY:

\_\_\_\_\_  
 (signature)

\_\_\_\_\_  
 (printed name and title)

Agent of: \_\_\_\_\_

\_\_\_\_\_  
 (condemnor)

If you decide to accept the offer of \$ \_\_\_\_\_ made by

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\_\_\_\_\_ (condemnor) sign your name below and mail this form to the address indicated above. An additional copy of this offer has been provided for your file.

#### ACCEPTANCE OF OFFER

I (We), \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, owner(s) of the above described property or interest in property, hereby accept the offer of \$ \_\_\_\_\_ made by \_\_\_\_\_ (condemnor) on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### NOTARY'S CERTIFICATE

STATE OF \_\_\_\_\_ )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed) NOTARY PUBLIC

(d) If the condemnor has a compelling need to enter upon property to restore utility or transportation services interrupted by disaster or unforeseeable events, the provisions of subsections (a), (b), and (c) do not apply for the purpose of restoration of utility or transportation services interrupted by the disaster or unforeseeable events. However, the condemnor shall be responsible to the property owner for all damages occasioned by the entry, and the condemnor shall immediately vacate the property entered upon as soon as utility or transportation services interrupted by the disaster or unforeseeable event have been restored."

Renumber all SECTIONS consecutively.  
and when so amended that said bill do pass.

(Reference is to HB 1360 as reprinted February 21, 2009.)

HERSHMAN, Chairperson

Committee Vote: Yeas 10, Nays 1.

EH 1360—LS 7160/DI 101+



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